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April 15, 2015

VIA ELECTRONIC & US MAIL

Ms. Stephanie Vaughn
ATTN: Lower Passaic River Remedial Project Manager
Emergency and Remedial Response Division
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, New York 10007

**Re: Monthly Progress Report No. 31 – March 2015
Lower Passaic River Study Area (LPRSA)
River Mile 10.9 Removal Action
CERCLA Docket No. 02-2012-2015**

Dear Ms. Vaughn:

de maximis, inc. is submitting this Monthly Progress Report for the above-captioned project on behalf of the Cooperating Parties Group (CPG) pursuant to the Administrative Settlement Agreement and Order on Consent for Removal Action (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 28 of the River Mile (RM) 10.9 Settlement Agreement.

(a) Actions which have been taken to comply with this Settlement Agreement during the month of March, 2015.

Meetings/Conference Calls

- None

Correspondence

- On March 16, EPA provided comments on the CPG's draft QAPP worksheets for monitoring the RM 10.9 Removal Area cap submitted on January 23.
- On March 16, CPG submitted the February Monthly Progress Report to EPA.

Work

- CPG reviewed EPA's March 16 comments on the draft QAPP worksheets for monitoring the RM 10.9 Removal Area cap.

(b) Results of Sampling and Tests

- None

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(c) Work planned for the next two months with schedules relating to the overall project schedule for design completion and construction

- CPG will respond to EPA comments on the draft RM 10.9 Removal Action Final Report when received.
- CPG will participate in an April 1, 2015 conference call with EPA to discuss the Agency's comments on the draft QAPP worksheets.
- CPG will continue to evaluate and develop approaches and options for both physical and chemical monitoring of the RM 10.9 Removal Area cap.

(d) Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays

- The CPG believes that only physical monitoring is sufficient and required to monitor the effectiveness and integrity of the cap. If the RM 10.9 Removal Area cap is similar and consistent to that implemented as any final remedy for the LPRSA, then the need for long-term chemical monitoring for the cap should be determined as part of the overall LPRSA long-term monitoring plan and regular five-year reviews. This appears to be the rationale developed for the Hudson River and Onondaga Lake and should apply to the RM 10.9 Removal Action as well.

The RM 10.9 Removal Action was implemented to reduce the risk associated with the direct contact exposure to sediments by people due to elevated concentrations of COPCs in RM 10.9 surface sediments. The cap physically prevents direct contact to underlying sediment by river users. As an added benefit an active layer was included to further enhance the protectiveness of the cap. In the near term, the surface of the cap is likely to be recontaminated by sediment deposition which is likely to be in the low 100s of ppt of TCDD – two orders of magnitude less than the pre-dredge surface of the RM 10.9 Removal Area. The CPG does not agree with Region 2's rationale for an aggressive short-term chemical monitoring program of the RM 10.9 cap. It is unnecessary to evaluate the short-term effectiveness of the cap to chemically isolate COPCs when the primary goal of the Removal Action and the construction of the cap were to remove and reduce the direct contact risk due to the presence of elevated concentrations in the surface sediment.

On the Hudson River, Region 2 requires monitoring of the Phase 2 engineered caps for physical integrity and chemical isolation effectiveness. The chemical isolation effectiveness monitoring will occur in designated sentinel areas 10 years after completion of cap construction in those areas and then at 10-year intervals, or as soon as practical after a flood event exceeding the design recurrence interval for those caps.

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For Onondaga Lake, long-term monitoring of the cap includes routine physical and chemical monitoring which is anticipated to occur 5, 10, 20, and 30 years after construction begins. For the Lower Passaic River Study Area, EPA has required no chemical monitoring at the Lister Avenue Phase 1 Removal Action site. Region 2's requirements for the RM 10.9 Removal Area are completely inconsistent with the chemical monitoring requirements for frequency and schedule established at other Region 2 capping sites such as the Hudson River and Onondaga Lake.

The CPG provided comments to Region 2 on March 31, 2014 in response to the Region's January 24, 2014 comments on CPG's draft QAPP Worksheet 9 (dated January 22, 2014). Region 2 and the CPG have initiated dispute resolution to resolve the differences on the scope of the RM 10.9 Long Term Monitoring Plan. The CPG provided its concerns with the Region's proposed scope of long term monitoring on June 23, 2014. Region 2 provided its responses to the CPG's concerns on October 21, 2014. The Region and the CPG met on November 19, 2014 to discuss chemical monitoring of the RM 10.9 cap. The CPG continues to strongly disagree with the rationale and scope (i.e., number of locations, sampling depths and frequency) of the Region's chemical monitoring approach; nonetheless, the CPG has agreed to undertake (1) the development of sampling and analytical methods for porewater sampling; (2) as well as develop what the CPG believes is a reasonable initial sampling approach for a chemical sampling of porewater; and (3) continue discussions and exchange of information with the Region.

- The CPG strongly disagrees with the EPA's July 15, 2013 letter denying the Force Majeure condition outlined in CPG's June 29, 2013 letter. EPA's rationale for denial is inconsistent with terms and definitions in the AOC. Both the inoperability of the Bridge Street Bridge due to Hurricane Sandy and the repeated delays in the repaired motors being shipped and reinstalled - have been and continue to be clearly beyond the control of the CPG. Moreover, Hudson and Essex Counties failed to meet their obligations under Federal Regulations to properly maintain and operate their bridges and to provide proper notice of the status of their bridges to US Coast Guard, mariners and the general public. Finally, the CPG has voluntarily provided funds to the Counties to operate the bridges with no regulatory requirement to do so. As noted above it is the Counties' obligation to ensure that their bridges are operating and ready to open upon notice. CPG has addressed this issue in its July 31, 2013 letter to EPA and to which the Region has not responded.
- There is still no resolution concerning the Tierra/Maxus/Occidental (TMO) UAO and their participation in the RM 10.9 Removal Action. As documented in the CPG's correspondence of July 27, 2012 and September 7, 2012, the offer from TMO was inadequate and provided no meaningful value to the RM 10.9 Removal Action.

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If you have any questions, please contact Bill Potter, Rob Law or me at (908) 735-9315.

Very truly yours,

de maximis, inc.



John A. Rolfe
RM 10.9 Removal Action Project Coordinator

cc: Christopher Jumenez, EPA
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